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ARNOLD &amp; PORTER

November 6, 1985

MEMORANDUM

TO: Philip Morris/Barclay Files  
FROM: Hadrian R. Katz  
RE: October 24, 1985 Oak Ridge Meetings

On Thursday, October 24, I attended a series of meetings at the Oak Ridge National Laboratory concerning the FTC's efforts to develop a modified cigarette holder to solve the problem created by the Barclay filter. Also present were Warren Claflin and Murphy Sprinkel from Philip Morris; Roger Jenkins, Tom Gayle, and Mike Guerin from Oak Ridge; Judy Wilkenfeld and Susan Cohn from the FTC; Jim Nall (apparently a scientist) and Bob Sachs (a lawyer) from Brown & Williamson; Alan Norman (apparently a scientist) from R.J. Reynolds, along with Andy Copenhaver from Womble Carlyle and Judith Oldham from Collier, Shannon; and Donald Wood, a lawyer from Martin Marietta, the Oak Ridge contractor.

The principal conclusion of the day is that the problem encountered by the FTC with the Philip Morris holder -- different values from different operators on comparable Barclay cigarettes -- is real. By pushing the Barclay cigarette more firmly against the annular insert in the Philip Morris holder, it is possible to reduce the dilution and increase the resistance-to-draw. Accordingly, there

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would need to be additional development of the holder before it could be acceptable to the FTC as a solution to the Barclay problem. The FTC still likes the Philip Morris modified holder conceptually, although the sentiment for a two-stage testing protocol with an initial screening step appears to be fairly strong.

The meetings began with a question-and-answer session, at which Nall was the only one who had any questions. Unless otherwise indicated, Jenkins provided the answers. The points were essentially as follows:

1. What compliance tubing was used in the Kamm holders?
  - The tubing was supplied by Brown & Williamson. It was probably low modulus, although Jenkins was not sure. Wilkenfeld said she made a special request for the tubing from London.
2. Why were the cigarettes inserted 7 mm, instead of the standard 10 mm FTC insertion?
  - It was desired to use the same insertion depth for all three holders, and it was not possible to insert cigarettes into the Philip Morris holder more than 7 mm. Both Nall and Claflin were surprised by that, indicating that they had been able to insert cigarettes into the Philip Morris holder the standard 9 to 10 mm. This point appeared at the time as though it might have some significance, but nothing seemed to come of it as the day went forward.

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3. The two sides of the rubber material used in the Philip Morris holder were different, and Nall inquired which side was to face the cigarette.
  - Sprinkel indicated that both sides of the material are identical; Nall may have ordered the wrong product. Jenkins indicated that he used the holders exactly as they came from Philip Morris.
4. Nall inquired as to exactly what apparatus was used for pressure-drop measurements, and where the apparatus could be obtained.
  - Jenkins provided hand-out sheets on the apparatus. The equipment is familiar to Philip Morris. Nall made clear that he wants to build an exact replica of the equipment used at Oak Ridge to see if the results obtained in the FTC's tests are exactly reproducible.
5. Nall inquired how pressure was applied to to Kamm holders.
  - Jenkins explained how the equipment was set up, and indicated that no problems were ever encountered. Once the apparatus was observed in operation, the effectiveness of the FTC's techniques became apparent.
6. Why did the pressure-drop results not indicate the standard 8 mm increase of the Cambridge filter pad in the holder?
  - The machine was re-zeroed after the holder was installed. This was another point that became perfectly obvious once the equipment was viewed.
7. Why was the Kamm holder pressurized to 100 inches of water in the various tests?
  - Problems began to arise with the tubing at about 150 inches, and Jenkins wanted

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to leave an adequate margin for error. The Filtrona holder could not safely be used above 50 inches.

8. Nall indicated that Brown & Williamson has had repeated problems with cracking and leaking of the labyrinth seals used in the Philip Morris holder, and wondered whether Oak Ridge had had the same experience. In addition, Nall had some difficulty with the cigarette being pulled back by the labyrinth seals.

-- Jenkins generally indicated that he had not experienced any of those difficulties with the Philip Morris holder. He did note, however, that there was the inter-operator variation problem. Nall jumped on that point, and stated that Brown & Williamson had so much inter-operator variation with the Philip Morris holder as to make it completely unworkable. Claflin indicated that Philip Morris had never experienced that kind of difficulty, and noted that for each individual operator, the Philip Morris holder produced more consistent results than either of the others tested by the FTC.

9. Nall pressed the Government representatives at the outset and throughout the day for a copy of the scope of assignment originally given by the FTC to Oak Ridge. Wilkenfeld repeatedly and firmly refused, and suggested that Brown & Williamson file a FOIA request.

Following the questions and answers, we proceeded to a demonstration of the FTC equipment. Jenkins explained that the Barclay tests had all been completed more than a year ago, but many of the actual holders and cigarettes used have been maintained, and the original data sheets still exist. Jenkins noted that the experimentation had

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been done in half-day sessions to prevent fatigue, and only on Tuesdays, Wednesdays and Thursdays when it was felt operators would be sharpest.

The equipment set-up was very professional, and everything worked smoothly. The Philip Morris holder employed was not tightly assembled, and that may account for the limited 7 mm insertion depth noted above. That does not appear to be of great moment, however, because as noted above the inter-operator problem is real.

The Oak Ridge tests concluded that communication among operators could lead to consistent results with the Philip Morris holder, and that appears to make sense. There is no clear objective way to describe the amount of force to be employed in pushing the cigarette against the rubber insert, but if people are permitted to observe one another they will tend to reach a fairly consistent behavior.

Following the demonstrations, there was some further discussion of the mechanics of Brown & Williamson obtaining replicas of the Oak Ridge equipment. It sounded as though Brown & Williamson was trying to make out a case for a delay in responding to the request for comments, and Wilkenfeld basically responded by indicating that extensions of the deadline would freely be given.

At the end of the day, there was a brief private discussion between Wilkenfeld and Cohn and the Philip

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Morris representatives. (Wilkenfeld was quite willing to have Guerin and Jenkins participate, but I suggested that that may be inappropriate in the event of some future hearing at which either of them might be called upon to testify.) Wilkenfeld made clear that she is hoping that Philip Morris will be <sup>able</sup> to improve its holder to solve the inter-operator inconsistency problem. In addition, the FTC is strongly inclined toward having an initial screening procedure based on pressure-drop measurements, and would welcome Philip Morris engineering an adapter along the lines of the schematic in the Federal Register notice. I told Wilkenfeld that we would do the best we could, and get back to her.

cc: G. Carlton Adkins, Esquire  
Mr. Warren E. Claflin

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